

  
**INDIANA COURT OF APPEALS**  
**ORAL ARGUMENT AT A GLANCE**  
LAWRENCE NORTH HIGH SCHOOL —  
INDIANAPOLIS



## ***FWPBA and Jones v. City of Fort Wayne***

**Appeal from:**  
Allen Superior Court,  
The Honorable David J.  
Avery, Judge

**Oral Argument:**  
Wednesday, February 25, 2009  
1:25-2:25 a.m.  
20 minutes each side

### **Civil Law**

The parties will present arguments pertaining to whether Officer Jones was injured “while performing her duty” as a police officer pursuant to Indiana Code section 36-8-4-5 (2007).

### **CASE SYNOPSIS**

#### **Facts and Procedural History**

The Fort Wayne Patrolmen’s Benevolent Association, Inc. (“FWPBA”) is the duly authorized union representative for patrolmen for the Fort Wayne Police Department and is charged with the responsibility of representing its members for the purpose of collective bargaining with the City of Fort Wayne (“City”). Michaeline Jones is employed by the City as a police officer and is a member of the FWPBA. Officer Jones has been assigned to the Detective Bureau since 1993.

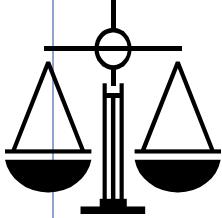
In 1994, the City instituted the Home Fleet Vehicle Policy (“HFV Policy”). Under the HFV Policy, Fort Wayne police officers are permitted to drive their City-owned police ve-

hicles for personal use while off-duty. One main purpose for instituting the HFV Policy was to increase police visibility. The City is not required by law or by the parties’ Collective Bargaining Agreement (“CBA”) to have an HFV Policy.

Officer participation in the HFV Policy is voluntary, and officers participating in the HFV Policy must agree to adhere to certain rules and regulations governing both their “on-duty” and “off-duty” use of the City-owned police vehicles. For instance, the police radio must be turned on whenever the police vehicle is in use, officers must be armed when operating the police vehicle, only the officer is permitted to operate the vehicle, and while off-duty,

*FWPBA and Jones v. City of Fort Wayne*

## CASE SYNOPSIS



both the officer and any passengers must wear appropriate clothing when traveling in the vehicle. Additionally, officers must keep their vehicles clean and have certain maintenance performed by the City during on-duty hours. Although officers are not required to constantly switch between “on-duty” and “off-duty” status, officers are required to either stop or request assistance from an on-duty officer if, while off-duty, the officer encounters a stranded motorist. An officer becomes eligible for overtime pay if the officer engages in police work, effectively going “on-duty” during off-duty hours. Violations of the HFV Policy may result in revocation of the privilege of off-duty use of a home fleet vehicle.

On December 15, 2006, Officer Jones, who was a participant in the HFV program, left work and began her ten-to-fifteen-minute-drive home in her police vehicle. Officer Jones did not have orders to engage in any police work that evening. While driving home, Officer Jones was involved in an accident approximately three blocks from police headquarters. As a result of the accident, Officer Jones suffered non-fracture injuries to her wrist and neck. Officer Jones sought reimbursement for her out-of-pocket medical expenses from the City. The City denied Officer Jones’s request for reimbursement, claiming that she was off-duty at the time of the collision.

On May 17, 2007, Officer Jones and the FWPBA (“collectively, Appellants”) filed suit against the City seeking damages and a declaratory judgment that the City was liable for injuries sustained by off-duty police officers who were involved in an accident while operating a home fleet vehicle pursuant to the HFV Policy. The parties filed competing

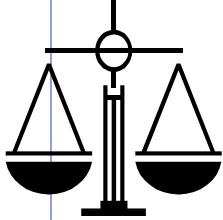
motions for summary judgment. The trial court granted the City’s motion for summary judgment and denied Appellants’ motion for summary judgment. Appellants now appeal the trial court’s order granting summary judgment in favor of the City.

### Summary of Arguments:

Appellants contend that the trial court erred in granting summary judgment in favor of the City. Specifically, Appellants claim that the City should be held liable for injuries suffered by Officer Jones as a result of the accident involving her home fleet police vehicle following the conclusion of her shift as a police detective because she was injured “while performing her duty” as a police officer pursuant to Indiana Code section 36-8-4-5. Appellants further claim that Officer Jones is entitled to recover for her injuries under the parties’ CBA. For its part, the City contends that the trial court’s order granting summary judgment was proper because Officer Jones was not “performing her duty” as a police officer at the time of the accident, and also because Officer Jones is not entitled to recover under the parties’ CBA.

*FWPBA and Jones v. City of Fort Wayne*

## CASE SYNOPSIS



### Glossary:

**COLLECTIVE BARGAINING:** Negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits. BLACK'S LAW DICTIONARY 280 (8<sup>th</sup> ed. 2004).

**DECLARATORY JUDGMENT:** A binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement. BLACK'S LAW DICTIONARY 859 (8<sup>th</sup> ed. 2004).

**SUMMARY JUDGMENT:** A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law. BLACK'S LAW DICTIONARY 1476 (8<sup>th</sup> ed. 2004). When considering a motion for summary judgment, the court considers the contents of the pleadings, the motions, affidavits, and additional evidence designated by the parties to determine whether there is a genuine issue of material fact rather than one of law. This procedural device allows for the speedy disposition of a controversy without the need for a trial. BLACK'S LAW DICTIONARY 1476 (8<sup>th</sup> ed. 2004).

## TODAY'S PANEL OF JUDGES

### Hon. L. Mark Bailey (Decatur County) Presiding

- Judge of the Court of Appeals since January 1998

**L. Mark Bailey** was raised in Decatur County on the family farm first homesteaded by his ancestors more than 150 years ago. He was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in January of 1998 and was retained on the Court by election in 2000. Before his appointment, Judge Bailey was a trial court judge, an administrative law judge, and a practicing attorney. He earned his B.A. from the University of Indianapolis in 1978; his J.D. from Indiana University School of Law at Indianapolis in 1982; and his M.B.A. from Indiana Wesleyan University in 1999.

During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He chaired the Local Coordinating Council of the Governor's Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution committee. He also served on the Board of Managers of the Indiana Judges Association and the Judicial Ethics Committee of the Indiana Judicial Center. Judge Bailey is Past-Chair of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation's Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions. His writings include, "A New Generation for Pro Bono," published in the *Indiana Lawyer* in 2006. He is also a certified civil mediator and a Master

in the Indianapolis American Inn of Court.

A strong supporter of law-related education, Judge Bailey is currently a member of the Judicial Education Committee of the Judicial Conference of Indiana. He is also an adjunct professor at the University of Indianapolis and, in February of 2006, served as the Distinguished Jurist in Residence at Stetson University College of Law. In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral arguments into community settings. Judge Bailey is also a frequent presenter at Indiana Continuing Legal Education seminars, and he regularly volunteers to judge law school trial advocacy and moot court competitions and to teach at National Institute of Trial Advocacy programs.

## TODAY'S PANEL OF JUDGES

### Hon. Paul D. Mathias (Allen County)

- Judge of the Court of Appeals since March 2000

**Paul D. Mathias** was appointed to the Court in March, 2000. Judge Mathias is a fifth-generation Hoosier and grew up in Fort Wayne. He graduated from Harvard University, *cum laude*, in 1976 and from Indiana University School of Law—Bloomington in 1979.

Judge Mathias practiced law for six years in Fort Wayne until he was appointed as Referee of the Allen County Small Claims Court in 1985. He served there until his appointment as Judge of the Allen Superior Court—Civil Division in 1989. Judge Mathias served as an officer of the Indiana Judges Association from 1993 – 1997 and as its president from 1997 – 1999. He has been honored to receive the Centennial Service Award from the Indiana State Bar Association in 1996 and to be appointed a Sagamore of the Wabash.

Judge Mathias has an abiding interest in civic education and is

especially proud to support the We the Program program throughout Indiana.

### "Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 200 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

## TODAY'S PANEL OF JUDGES

### Hon. Cale A. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007

**Cale J. Bradford** was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He is a member of the Lawrence Youth Football League Advisory Board of Directors and the Lawrence Men's Soccer Booster Club. He and his wife, a full-day kindergarten teacher, have five children.

## ATTORNEYS FOR THE PARTIES

### **For Appellant, FWPBA and Jones:**

Richard E. Beers  
110 West Berry Street, Suite 1100  
Fort Wayne



**Richard Beers** was admitted to practice law in Indiana in 1976. He received his undergraduate degree from Indiana University-Bloomington and his law degree from Indiana University-Indianapolis. He has served as a Public Defender and as a Deputy Prosecutor in Allen County. He is admitted to practice before the United States District court, Northern and Southern districts of Indiana as well as the United States Court of Appeals, Seventh Circuit

His practice is focused primarily on civil litigation, both Plaintiffs and Defense and Public Sector Labor and Police law. He is a member of the Allen County Bar Association, the Indiana State Bar Association and the Indiana Trial Lawyers Association.

### **For Appellee, City of Fort Wayne:**

Patrick L. Proctor  
803 S. Calhoun Street, Ste. 400  
Fort Wayne

**Patrick L. Proctor** is admitted to the practice of law before the Indiana Courts, the U.S. Supreme Court; U.S. Court of Appeals, Seventh Circuit; U.S. District Court, Northern and Southern Districts of Indiana. He is a graduate from the Ohio Northern University Pettit College of Law (J.D., with distinction, 1993), and the University of Kansas (B.A. 1990).

Mr. Proctor's law practice focuses on litigation, including civil rights, commercial litigation, employment law, labor law, and municipal law. This will be

Mr. Proctor's second oral argument before the Indiana Court of Appeals.